IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CR No.89 of 2002.

Date of decision: 17th August, 2007.

Jiwan Singh & others .....Petitioners

-Versus-

State of H.P. and another ....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioners: Mr.Ashwani Sharma, Advocate.

For Respondents : Mr.M.S.Chandel, Advocate General with Mr.J.S.Guleria, Law Officer.

Deepak Gupta, J.

This Revision has been filed against the order dated 12.12.2001 passed by the learned District Judge, Mandi in Civil Appeal No.36 of 1999 (98) whereby he has dismissed the appeal filed by the petitioners.

The petitioners herein filed a Civil Suit in the Court of learned Senior Sub Judge, Mandi. This suit was later transferred to the Court of Sub Judge Ist Class (1), Mandi. The petitioners sought declaration to the effect that they have become owners in possession of the suit land by way of adverse possession and the order dated 26.11.1992 passed by the Financial Commissioner upholding the ejectment order passed against them is illegal and liable to be set-aside. The Trial Court held that keeping in view the provisions of Section 163 of the H.P. Land Revenue Act (hereinafter referred to as the Act)

wherever a question of title is involved including a plea of ownership based on adverse possession, the matter has to be adjudicated by the Assistant Collector Ist Grade by exercising the powers of Civil Court. He consequently held that the suit was not maintainable and ordered the return of the plaint so that the same be presented before the competent Court. The learned District Judge has affirmed these findings in appeal.

Proceedings under Section 163 of the Act were initiated against the predecessor in interest of the present petitioner some time in the year 1980 and the order of ejectment was passed by the Assistant Collector on 31st March, 1986. Thereafter, these proceedings were carried on in appeal or revision in Revenue Courts upto the level of Financial Commissioner, who decided the matter on 26.11.1992. The Civil Suit in question was filed on 1.9.1993.

It would be pertinent to mention that as per the unamended provisions of Section 163 of the H.P. Land Revenue Act the Revenue Officer did not have the authority to decide the question of title. This Court in **Kaka Ram vs. Financial Commissioner and others, AIR 1985 HP 21,** had clearly held that the Civil Court had jurisdiction to entertain a suit challenging the order of the Revenue Officer when question of title was involved. Therefore, at the relevant time the petitioner could have challenged the order of the Revenue authority in a Civil court and the Civil Court had the power to decide the question of title at that time.

Thereafter, the H.P. Land Revenue Act was amended by the H.P. Land Revenue (Amendment) Act, 1989. After the amendment of the Land Revenue Act in case a question of title with regard to the

allegedly encroached land even by claiming title on the basis of adverse possession is raised by the alleged encroacher a Revenue Officer not below the rank of Assistant Collector Grade-I shall proceed to determine the question as if it is a civil court and exercise all, such powers as are exercised by the civil court. An appeal from the order/judgment of the Assistant Collector Ist Grade lies to the District Judge. Further appeal lies to the High Court only if a substantial question of law is involved in the case. It would be pertinent to refer to the amended provisions of Section 163 of the Act:

> "**163.Prevention of encroachment of lands**:- (1)Where Government land or land which has been reserved for site of a village or for the common purposes of the co-sharers therein has been encroached upon by any co-sharer or other person for any purpose including construction of a building or other structure thereon, then—
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> (a) the Revenue Officer may of his own motion or on the application of any other co-sharer eject the encroaching person (hereinafter in this section referred to as the encroacher) from such land and by order, proclaimed in the manner mentioned in section 23, prohibit repetition of the encroachment therein:
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> Provided that no encroacher shall be ejected under this clause unless he has been given a reasonable opportunity of showing cause against the ejectment.
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> (b) The Revenue Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of such encroachment and may, by order, require the encroacher to pay the damages within such period and in such installments as may be specified in the order;

(c) If the encroacher has erected any building or other structure or has grown crops or planted trees on the encroached land it shall be competent for the Revenue Officer, while ordering his ejectment, to dismantle such building or other structure and confiscate any produce or other material on such land and put the same in public auction and deposit the sale proceeds thereof into the Government Treasury; and

(d) The Revenue Officer may impose upon the encroacher a fine upto one thousand rupees per bigha or part thereof in the case of first encroachment and, where the encroachment is repeated, a fine upto two thousand rupees per bigha or part thereof for each such subsequent encroachment.

(2)Any amount payable as damages under clause (b) of sub-section (1) or as fine under clause (d) of that sub-section may be recovered in the same manner as arrears of land revenue.

(3)When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, shall proceed to determine the question, as if he, were a civil court and shall exercise all such powers as are exerciseable by a civil court.

(4)For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.

(5)An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6)A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved; and

(7)No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this section in respect of in anything good faith done or purported to have been done under the provisions thereof or the rules made thereunder.

Explanation—For the purposes of this section, any person who holds land under a lease granted by the government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be deemed to be an encroacher unless such person gets the lease extended or renewed."

Virtually an identical matter was dealt with by this Court in **Sita Lal vs. State of H.P. and others, HLJ 2006 (HP) 1039,** in which case also initial order of ejectment had been passed prior to the amendment of the H.P. Land Revenue Act. This Court keeping in view the entire facts and circumstances and the changes in law held as follows:

"9.It may be true as contended by learned Advocate General that in view of the peculiar circumstances of the case the proper remedy for the appellant should have been to file a writ petition under Article 226 of the Constitution of India after the conclusion of the proceedings under the Land Revenue Act. However, in my view a party should not be left without any remedy against an order which the revenue officer had no jurisdiction to pass. Here is a case where admittedly the revenue officer at the time when he was hearing the matter had no jurisdiction to decide the question of title. As per the law laid down by this Court the Revenue Officer had jurisdiction to take action under Section 163 of the Act only if the land in question was government land and that there should be no dispute on the question of title. This court in

Kaka Ram's case (supra) had clearly laid down that if there is a dispute with regard to the title then this dispute should be resolved by a court of competent jurisdiction and only thereafter powers under Section 163 could be used.

10.The position stands drastically changed by the amendment which came into for in 1989. Now the Revenue Officer can convert himself into a court and after following proper procedure as laid down in the provisions of Section 163 of the Land Revenue Act decide the question of title. This order can be challenged before the District Judge. Section 163 (3) as now introduced makes it clear that the question regarding title can be decided in relation to a land from which ejectment is made or is sought to be made. It is thus clear that the question can be decided even after an order of ejectment has been made. In the present case admittedly the appellant is in possession of the land. Therefore, the order of the learned lower appellate Court directing that the appellant may initiate proceedings before the Assistant Collector Ist Grade having territorial jurisdiction to decide the question of title raised by them is upheld."

In view of the aforesaid position of law the orders of both the Courts below ordering return of the plaint are upheld since the Civil court had no jurisdiction to hear the matter. However, in the peculiar facts and circumstances of the case it is directed that the in case the petitioners file the returned plaint before the Assistant Collector Ist Grade concerned on or before 30th September, 2007 the said Assistant Collector shall determine the question of title raised by the petitioners with regard to their having become owners by way of adverse possession. It is made clear that the question will be decided with reference to the date on which the proceedings were initially initiated under Section 163 of the Act. Before deciding the question the

Assistant Collector shall issue notice to the State. The State shall be given time to file written statement. The Assistant Collector shall thereafter frame issues and record evidence. Keeping in view the fact that the proceedings have been pending for the last 25 years it is directed that the Assistant Collector concerned shall decide the matter as expeditiously as possible. He shall not give more than 3 opportunities to either side to lead evidence. If necessary the matter shall be taken up on day to day basis and shall be finally disposed of on or before 31st of May, 2008.

The Revision petition is disposed of in the aforesaid terms with no order as to costs.

August 17, 2007.
PV

(Deepak Gupta),
Judge